

Agreement
between
The Department of Energy of the United States of America
and
The Federal Minister for Research and Technology
of the Federal Republic of Germany
on
Cooperation in Coal Liquefaction
Using the SRC-II-Process

The Department of Energy of the United States of America (DOE), and the Federal Minister for Research and Technology of the Federal Republic of Germany (BMFT), (hereinafter referred to as the Parties);

Whereas DOE has entered into a contract (DEAC-05-OR0-3055), formerly contract number ET-78-C-01-3055, including any superseding contract (hereinafter referred to as the "SRC-II Prime Contract") with The Pittsburg and Midway Coal Mining Co., a wholly-owned subsidiary of Gulf Oil Corporation (hereinafter referred to as the "Prime Contractor") for a multiphase project for the design, construction and operation of a nominal 6000 ton/day demonstration module of a full-scale commercial plant for the production of liquid solvent refined coal products, using the SRC-II process proven successful in the United States Government-owned "Tacoma Pilot Plant", and supporting activities (hereinafter called the "SRC-II Project");

Whereas, the Parties entered into a "Memorandum of Understanding between the United States Department of Energy and the Federal Ministry for Research and Technology of the Federal Republic of Germany on Cooperation in Coal Liquefaction" (hereinafter referred to as the "MOU") of October 25, 1978, agreeing to cooperation in the SRC-II Project;

Whereas, the MOU detailed cooperation only for Phase 0 of the SRC-II Project and provided for a completion date of April 30, 1979, and required an additional agreement for Phases I, II and III of the SRC-II Project;

Whereas, the SRC Cooperative Arrangement shall be comprised of development of SRC-II technology as undertaken to date by the United States Government, Gulf Oil Corporation, The Pittsburg and Midway Coal Mining Co., Ruhrkohle AG and Steag AG funded by BMFT, and the activities included in Phases 0, I, II and III of the SRC-II Project (hereinafter referred to as the "SRC Cooperative Arrangement");

Whereas, it is envisaged for DOE to replace the Prime Contractor with a U.S. joint venture company of U.S. and FRG industry or otherwise to ensure that BMFT obtains the benefits for FRG industry intended under this agreement;

Whereas, it is envisaged to replace the existing SRC-II Prime Contract by a cost-sharing agreement between DOE and the Prime Contractor;

Therefore, the Parties agree to cooperate as follows:

ARTICLE 1

Subject

1. The Parties agree in signing this Agreement to cooperate in Phases I, II and III of the SRC-II Project, which phases cover detail/final design (Phase I), procurement and construction (Phase II) and operation and evaluation (Phase III) of a nominal 6000 ton/day demonstration module.
2. All undertakings of the MOU shall continue under its provisions until such time as Phase I has begun or upon signature of this Agreement, whichever is later. After notification and explanation to the Steering Committee as established under Article 2 of this Agreement, DOE shall set the time of initiation of Phase I. No later than six months after initiation of Phase I, the Steering Committee shall adopt by unanimity a DOE prepared "Reference Baseline Project Control Document" (hereinafter referred to as the "Baseline Document" which shall be periodically updated) which among other matters shall set forth the estimated costs for the SRC-II Project incurred after October 1, 1979, and the technical basis, overall schedule and key decision points for Phases I, II and III of the SRC-II Project. In addition, the Steering Committee shall receive prior notification of a list of major subcontracts set forth in the Baseline Document. In any event, subcontracts shall be entered into in accordance with the terms and conditions of the SRC-II Prime Contract.
3. In the event the Steering Committee is unable to adopt the Baseline Document by unanimity within six months after initiation of Phase I, this Agreement shall be null and void unless the Parties agree otherwise.

Immediately upon adoption of the Baseline Document, the provisions thereof shall be applicable to Phases I, II and III.

4. Nothing in this Agreement shall conflict with the existing SRC-II Prime Contract. It shall be DOE's responsibility to negotiate the cost-sharing arrangement pursuant to Paragraph 4 of Article 4 and any other superseding contract consistent with this Agreement.

ARTICLE 2

Steering Committee

1. With the initiation of Phase I, the Steering Committee, consisting of two (2) designated representatives of each Party, shall provide direction for the SRC-II Project as set forth in this Article. Each Party shall also designate alternate representatives who shall serve as members of the Steering Committee should the designated representatives be unable to do so. Each Party shall inform the other Party in writing of all designations under this paragraph. One of the representatives of DOE shall act as Chairman of the Steering Committee.
2. The Steering Committee shall meet in regular session in the United States on a date mutually agreed upon when the Chairman so notifies all the members in writing, but at least twice a year. In addition, a special meeting shall be convened upon the request of a Party.

3. The Steering Committee shall review the progress of the work undertaken.
Any Party to the Steering Committee may make, at any time, recommendations regarding options for the SRC-II Project which would result in a change to the Baseline Document. Such recommendations shall be discussed by the Steering Committee for adoption.
4. The Steering Committee shall adopt by unanimity any significant changes to or key decisions in the Baseline Document. The definition of the terms "significant" and "key decisions" shall be established no later than the date of adoption of the Baseline Document and shall be included therein.
5. The Steering Committee shall guide and direct the Joint Project Management Team which it shall designate. The Joint Project Management Team shall be comprised of two (2) designated representatives of each Party. This team shall monitor the ongoing activities of the Prime Contractor of the SRC-II Project and apprise the Steering Committee, by means of monthly written reports, on the activities of the SRC-II Project and of any problems or issues needing the attention of the Steering Committee. These monthly reports shall not be further disseminated without a program and patent review by DOE and the Prime Contractor and shall be appropriately marked to protect any confidential information in the custody and control of the Prime Contractor in accordance with the terms and conditions of the SRC-II Prime Contract.

6. The Steering Committee may, from time-to-time, appoint special ad hoc groups to review for the Steering Committee actions on technical, financial, operational and other problems. Any reports generated shall not be further disseminated without a program and patent review by DOE and the Prime Contractor and shall be appropriately marked to protect any confidential information in the custody and control of the Prime Contractor in accordance with the terms and conditions of the SRC-II Prime Contract.
7. Aside from the undertakings of the Steering Committee as stated above, responsibility and control for the SRC-II Prime Contract shall be exercised by DOE. All legal and technical acts required to implement the Project in accordance with the Baseline Document, this Agreement, the SRC-II Prime Contract, significant changes to the Baseline Document, and all applicable laws, regulations, and licensing requirements, shall be performed by DOE.
8. The above Steering Committee structure and procedures shall be modified by mutual agreement of the Parties to accommodate additional parties as anticipated by Article 6 hereof.

ARTICLE 3

Information and Staff Assignment

1. BMFT shall receive for any and all uses copies of the various technical and management reports which are generated by the Prime Contractor and

delivered to DOE under the SRC-II Prime Contract, the reports having appropriate restrictions as to further dissemination until necessary DOE and Prime Contractor program and patent reviews have been completed.

2. BMFT shall have the right to assign, in proportion to its financial contribution as set forth in Article 4, staff selected by BMFT from a German industrial consortium subject to reaching satisfactory arrangements between BMFT's industrial designees and the Prime Contractor, working in coal liquefaction, to the SRC-II Project for the purpose of directly contributing work to the SRC-II Project. The staff assigned will be financed from the budget of the SRC-II Project. Details as regards each such assignment including costs shall be pursuant to the aforementioned arrangements. In addition, BMFT is permitted to nominate, subject to reaching satisfactory arrangements with the Prime Contractor, a mutually agreed upon number of observers at no cost to DOE or to the Prime Contractor. Such participation shall not affect the responsibilities of the Prime Contractor for the SRC-II Project. It is understood that the observers shall be permitted to make written reports to BMFT with a copy contemporaneously being provided to DOE. However, such reports must bear a restrictive designation limiting their use for evaluation purposes only within BMFT and its designee. Further dissemination shall not take place without a program and patent review by DOE and the Prime Contractor.
3. BMFT for itself and its representatives shall assume obligations with regard to the reports stated in this Article and paragraphs 5 and 6 of Article 2 which are necessary to protect the confidential information in

the custody and control of the Prime Contractor in accordance with the terms and conditions of the SRC-II Prime Contract. The result of the preliminary program and patent review by DOE and the Prime Contractor shall be communicated to BMFT within four weeks of the date of transmittal of the reports to BMFT. Specific guidelines covering the dissemination of information and access to the SRC-II locations shall be developed by an exchange of letters between the Parties.

4. In the event this Agreement becomes null and void pursuant to Article 4, paragraph 3, all technical and management reports received under paragraph 1, above, which have been provided to BMFT and which have not had the restrictive designation removed shall be returned to DOE.

ARTICLE 4

Finance

1. BMFT shall provide a financial contribution of twenty-five percent of the cost of the SRC-II Project as set forth in the Baseline Document. This contribution also covers a contribution of German industry in the envisaged cost-sharing agreement as mutually agreed between DOE and the Prime Contractor pursuant to paragraph 4 below. Detailed procedures and schedule for transferring such funds shall be set forth in an Annex hereto contemporaneously with the adoption of the Baseline Document.
2. Significant changes to the costs of the SRC-II Project shall require amendment by unanimity of the Baseline Document pursuant to paragraph 4

of Article 2. Upon the date of signature of an agreement pursuant to paragraph 2 of Article 7, BMFT shall provide to DOE beginning upon the date of signature of an agreement pursuant to paragraph 2 of Article 7 financial contributions in the amount and as scheduled in the Baseline Document and in accordance with procedures to be identified by DOE prior to the first payment. The Steering Committee shall adjust the amount of the financial contribution to take account of any changes in cost levels, if any, so as to ensure that the adjusted financial contribution represents a realistic assessment of the funds needed for the purposes of the activities specified in the Baseline Document. If there are significant changes in costs, the Steering Committee shall consider whether to adjust the technical scope of the Baseline Document.

3. In the event the intellectual property rights are not equitably apportioned within the time frame as provided in paragraph 3 of Article 7, this Agreement shall be null and void. In the event of such an occurrence or in the event the Steering Committee is unable to adopt the Baseline Document (cf. Article 1 paragraph 3) BMFT shall make payments to DOE only to cover the costs associated with the assignment of personnel.
4. If DOE enters into a cost-sharing arrangement with the Prime Contractor in the United States to obtain funds for the SRC-II Project, such a cost-sharing arrangement shall be negotiated separately by DOE with the Prime Contractor in fulfillment of the Prime Contractor's contractual obligation to propose a cost-sharing arrangement.

5. Participation of each Party in the SRC-II Project shall be subject to the appropriation of funds by the appropriate authority.

ARTICLE 5

Delegation

Kernforschungsanlage Julich GmbH (KFA) has been delegated by BMFT to be its representative in the implementation of this Agreement and as such shall be subject to the provisions of this Agreement.

ARTICLE 6

Addition of Parties

A national government desiring to become a Party to this Agreement after the date of its entry into force may become a Party to this Agreement if the Parties so agree. It shall assume appropriate rights and obligations of a Party including a commitment to provide a financial contribution of twenty-five percent of the cost of the SRC-II Project. The addition of a Party or Parties to this Agreement shall not otherwise affect the rights and obligations of the other Parties under this Agreement.

ARTICLE 7

Intellectual Property

1. The current situation as regards the patent rights outside of the United States of America, based on inventions made in the course of the SRC-II Prime Contract, is that such rights have been accorded to the Prime Contractor in accordance with the terms of the existing SRC-II Prime Contract and other contracts between the U.S. Government and the Gulf Oil Corporation. The existing SRC-II Prime Contract provides that such rights shall continue if the Prime Contractor and DOE enter into a cost sharing arrangement as envisioned in paragraph 4 of Article 4 hereof.
2. It is understood that the SRC Cooperative Arrangement intellectual property rights outside the United States of America shall be equitably apportioned in accordance with contributions and obligations undertaken with regard to the SRC-II Project. It is further understood that the equitable apportionment of such intellectual property rights shall be achieved in appropriate cost-sharing agreements or other agreements between the Parties, the Prime Contractor and/or any other entity contributing to the SRC-II Project.
3. It is expected that agreement with respect to such equitable apportionment shall take place well in advance of the start of construction but no later than 6 months after the initiation of Phase I.

ARTICLE 8

Legal Requirements

1. Cooperation under this Agreement shall be in accordance with the laws, regulations and license requirements of the respective countries of the Parties.
2. Solicitations for the provision of major components shall be issued by the Prime Contractor to suppliers in the countries of all the Parties, and responses to solicitations by firms of non-United States Parties shall be judged on an equal basis with United States firms in accordance with normal subcontracting procedures for DOE-funded projects. An advance listing of and a schedule for major component solicitations shall be provided to BMFT; BMFT may provide to the Prime Contractor a list of proposed subcontractors for the subcontract competition in each case. Upon request, DOE shall provide to BMFT a copy of the Prime Contractor's recommendations (excluding confidential information) relating to the award of subcontracts requiring DOE consent along with DOE's letter of consent.
3. An option for a share of the product from the operation of the SRC plant up to 25 percent shall be made available to BMFT. If BMFT chooses to exercise the option, conditions of the transfer of and payment for the product shall be negotiated between DOE and BMFT.
4. All questions related to this Agreement arising during its term shall be settled by the Parties by mutual agreement.

ARTICLE 9

Amendments

This Agreement may be amended in writing at any time by mutual agreement of the Parties. Such an amendment may be necessary to take into account the final terms of a cost-sharing plan between DOE and the Prime Contractor or to take into account any addition of parties pursuant to Article 6. Such amendments shall come into force in a manner determined mutually by the Parties.

ARTICLE 10

Participation in Returns

If in the course of product sales or sale of the plant itself or liquidation of the assets there are net proceeds remaining with the SRC-II Project in accordance with U.S. laws and regulations BMFT shall receive a 25 percent share of such net proceeds.

ARTICLE 11

Deposition

A copy of this Agreement shall be deposited with the Executive Director of the International Energy Agency, in recognition of that Agency's interest in international cooperation in research and development in the field of coal technology.

ARTICLE 12

Application to Berlin

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of entry into force of this Agreement.

ARTICLE 13

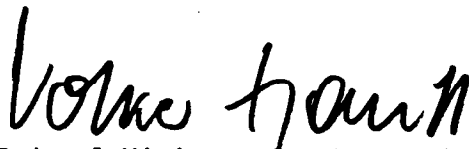
Duration

This Agreement shall enter into force on the date of signature and remain in force until the completion of the SRC-II Project as set forth in the Baseline Document.

Done at Washington, D.C. on October 5, 1978 in
the English and German languages, each text being equally authentic.



For the Department of Energy
of the United States of America



The Federal Minister for Research
and Technology of the Federal Republic
of Germany